

1 DISTRICT COURT JUDGE BENJAMIN H. SETTLE
2 MAGISTRATE JUDGE KAREN L. STROMBOM
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 THOMAS W.S. RICHEY,

10 Plaintiff,

11 v.

12 D. DAHNE,

13 Defendant.

NO. 3:12-CV-05060-BHS-KLS

RESPONSE TO PLAINTIFF'S
MOTION FOR *HABEAS CORPUS*
AD TESTIFICANDUM

14 Defendant, DENNIS DAHNE, by and through his attorneys of record, ROBERT W.
15 FERGUSON, Attorney General, and HALEY BEACH, Assistant Attorney General,
16 respectfully submits this response to Plaintiff Thomas Richey's Motion for *Habeas Corpus*
17 *Ad Testificandum*. ECF No. 110.

18 **I. RESPONSE**

19 "A plaintiff in a civil suit who is confined in state prison at the time of a hearing has no
20 absolute right to appear personally." *Demoran v. Witt*, 781 F.2d 155, 158 (9th Cir. 1985).
21 Nonetheless, district courts have undisputed power to issue a writ of *habeas corpus ad*
22 *testificandum* to secure the testimony of a state prisoner witness. *Wiggins v. County of Alameda*,
23 717 F.2d 466, 468 n.1 (9th Cir. 1983) (citing *Ballard v. Spradley*, 557 F.2d 476, 480 (5th Cir.
24 1977)). In determining whether to issue the writ, the court considers "whether the prisoner's
25 presence will substantially further the resolution of the case, the security risks presented by the
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1 prisoner's presence, the expense of the prisoner's transportation and safekeeping, and whether
 2 the suit can be stayed until the prisoner is released without prejudice to the cause asserted." *Id.*

3 Here, Plaintiff's presence will arguably further the resolution of the issue before the
 4 Court at the evidentiary hearing, as his credibility is the ultimate issue. Defendant is unaware of
 5 a particular security risk related to Plaintiff beyond the normal security risks attendant to the
 6 transport of convicted murderers. Given the length of Plaintiff's sentence, staying this matter
 7 until his release in 2039 is impractical. Assuming that the evidentiary hearing will only last one
 8 day, the cost of transport and safekeeping is not so high as to weigh against granting this motion,
 9 though Defendant reserves the right to argue this expense as a defense cost or an offset of any
 10 award to Plaintiff, depending on how this matter resolves. For these reasons, Defendant does not
 11 oppose the Court granting a writ of *habeas corpus ad testificandum* to secure Plaintiff's
 12 testimony at the evidentiary hearing.

13 **II. CONCLUSION**

14 In light of the foregoing, Defendant does not oppose Plaintiff's motion for a writ of
 15 *habeas corpus ad testificandum*.

16 RESPECTFULLY SUBMITTED this 8th day of August, 2019.

17 ROBERT W. FERGUSON
 18 Attorney General

19 s/ Haley Beach
 20

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CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the RESPONSE TO PLAINTIFF'S MOTION FOR *HABEAS CORPUS AD TESTIFICANDUM* with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed a copy of the document through United States Postal Service to the following non CM/ECF participant:

THOMAS W.S. RICHEY, DOC #929444
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 8th day of August, 2019, at Olympia, Washington.

s/ Cherrie Melby
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